

26. Defendant shall pay any stipulated penalties under this Consent Decree within fifteen (15) days of receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 14 above. Interest and late charges shall be paid as stated in Paragraph 28 herein.

27. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendant's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based.

VIII. LATE PAYMENT OF CIVIL OR STIPULATED PENALTY

28. If Defendant fails to make timely payment of the civil or stipulated penalties due under this Consent Decree, Defendant shall be liable for interest and penalties. Such late penalty payment(s) shall include the following:

A. Interest at the percentage rate established by the Department of Treasury pursuant to 31U.S.C. §3717, for any period after the due date;

B. A handling charge of \$20.00 at the end of the first thirty (30) day late period and a handling charge of \$10.00 for each thirty (30) day late period thereafter; and

C. A six percent per annum penalty charge if the civil or stipulated penalty is not paid within ninety (90) days after the due date.

IX. FORCE MAJEURE

29. If any event causes or may cause a delay in Defendant's compliance with any provision of this Consent Decree, Defendant shall notify the United States in writing as soon as practicable, but in any event within 10 days of when Defendant first knew of the event, or should

have known of the event by the exercise of due diligence. In this notice, Defendant shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Defendant to prevent or minimize the delay, and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid and minimize such delays.

30. Failure by Defendant to comply with the above notice requirements shall render this Section voidable by the United States as to the specific event for which Defendant failed to comply with such notice requirement, and, if voided, of no effect as to the particular event involved.

31. EPA shall notify Defendant of its agreement or disagreement with Defendant's claim of unavoidable delay or impediment to performance within 30 days of receipt of the notice provided under this Section. If the United States agrees that the violation has been or will be caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, the parties shall stipulate to an extension of the compliance requirement(s) affected by the delay by a period not exceeding the delay actually caused by such circumstances. Defendant shall not be liable for stipulated penalties for the period of any such delay.

32. If EPA does not agree with Defendant's claim of a delay or impediment to performance, either party may submit the matter to the Court for resolution pursuant to the dispute resolution procedures established in this Decree. If the Court determines that the violation has been or will be caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, and that Defendant could not have foreseen and prevented

such delay by the exercise of due diligence, Defendant shall be excused as to that violation and delay (including stipulated penalties), but only for the delay actually caused by such circumstances.

33. Defendant shall bear the burden of proving that any delay of any requirement of this Consent Decree was caused entirely by or will be caused entirely by circumstances beyond the control of Defendant or any entity it controls, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence. Defendant shall also bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

34. Unanticipated or increased costs or expenses associated with the performance of Defendant's obligations under this Consent Decree shall not constitute circumstances beyond Defendant's control, or serve as a basis for an extension of time under this Section. Temporary shutdowns for routine maintenance do not constitute circumstances beyond Defendant's control for purposes of this Paragraph.

X. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of Defendant under this Consent Decree that Defendant has not timely disputed in accordance with this Section.

36. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal

negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

37. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless Defendant files a petition with the Court for resolution of the dispute within twenty-one (21) days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one (21) days to file a response with an alternate proposal for resolution. In any such dispute, Defendant shall have the burden of proving that the United States' proposal is arbitrary and capricious.

38. The invocation of formal dispute resolution procedures under this section shall not extend, postpone or affect any obligation of Defendant under this Consent Decree not directly in dispute, unless EPA agrees, or the Court determines, otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue during the first 60 days of dispute resolution before the Agency but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraphs 11, 25, and 28, as applicable.

XI. PUBLIC ACCESS TO INFORMATION

39. All information and documents submitted by Defendant to EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported by Defendant as confidential business information in accordance with 40 C.F.R. Part 2.

40. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

XII. NOTICE

41. Unless otherwise provided herein, notifications to or communications with EPA or the Department of Justice shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

42. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

As to the EPA:

Chief, Air Enforcement and Compliance
Assurance Branch
Air and Radiation Division, AE-17J
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P. O. Box 7611
Ben Franklin Station
Washington, D. C. 20044
(reference: DOJ Case No. 90-5-2-1-2173)

Carole J. Ryczek
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

XIII. GENERAL PROVISIONS

43. This consent Decree resolves only the civil claims of the United States for the violations specifically alleged in the Complaint in this action through the date of lodging of the Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any other civil liability or any criminal liability of the Defendant.

44. This Consent Decree shall not relieve Defendant of its obligation to comply with all applicable provisions of Federal, State or local law, or regulations, or with any order of the Court, including but not limited to, an order pursuant to Section 303 of the CAA, 42 U.S.C. §7603; nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit.

45. Compliance with this Consent Decree shall not be a defense to any actions not related to this Consent Decree subsequently commenced pursuant to Federal laws and regulations administered by EPA.

46. This Consent Decree does not limit or affect the rights of Defendant or the United States as against any third parties.

47. Any modification of this Consent Decree must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all parties to this Consent Decree.

XIV. RETENTION OF JURISDICTION

48. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

XV. TERMINATION

49. After NWSW has demonstrated its full compliance with all terms of this Consent Decree for a continuous 12-month period and has paid any stipulated penalties required by this Consent Decree, either party may file a motion, or the parties may file a joint motion, asking the Court to terminate this Consent Decree.

XVI. PUBLIC COMMENT

50. This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. If no comments are received or no changes are proposed in response to public comments, Defendant consents to entry of the Consent Decree without further notice.